

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 1, 2005

To: The Commission
(Meeting of April 7, 2005)

From: Delaney L. Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 380 (Nunez) Electricity: electrical restructuring: resource adequacy**
As Introduced February 11, 2005

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support.

SUMMARY: This bill would require the commission, in consultation with the California Independent System Operator, to establish resource adequacy requirements to ensure that adequate physical generating capacity, dedicated to serving all load requirements, is available to meet peak demand plus requisite planning and operating reserves, and would require the commission to implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities.

This bill would require that the cost of meeting resource adequacy requirements, including the costs associated with system reliability and local area reliability found reasonable by the commission, be fully recoverable from all customers taking service from an electric corporation on a non-bypassable basis at the time the commitment to incur the cost is made or thereafter.

This bill would require that all load serving entities, including electric service providers and community choice aggregators, are subject to the same requirements for resource adequacy, resource diversity, cost-effective energy efficiency, and the renewables portfolio standard, as are applicable to an electric corporation.

DIGEST: Existing law (Public Utilities Act) requires the Commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation. Existing law also authorizes electrical service to be provided, in certain circumstances, by electric service providers and community choice aggregators.

This bill would add P.U. Code sec. 380 requiring the Commission to establish resource adequacy requirements applicable to all load-serving entities (LSEs).

DIVISION ANALYSIS (DSP/Energy): The bill would require that the commission ensure that non-utility energy service providers and community choice aggregators be subject to the commission's resource adequacy requirements, resource diversity requirements, cost-effective energy efficiency requirements, and renewables portfolio standard requirements in the same manner as they are applicable to an electrical corporation.

- Resource adequacy requirements. In D.04-01-050, the commission first addressed its jurisdiction over energy service providers to require resource adequacy. While the commission chose to narrowly limit the exercise of its jurisdiction in implementing P.U. Code sec. 394 through decisions in 1998 and 1999 to allow an ESP to meet the requirements of P.U. Code sec. 394 primarily by proving it had the technical capabilities to interact with the utilities' billing and metering systems and the ISO's scheduling protocols, it found that "...it is a well-settled legal principle that there is no legal or statutory prohibition against the Commission revisiting and revising its authority in a subsequent proceeding."¹ In response to applications for rehearing, the commission's D.04-07-037 again reinforced its position that the "...requirement that ESPs procure reserves sufficient to serve their entire load is a legitimate exercise of our duty under section 394(b) to protect consumers by ensuring that ESPs have the financial, technical and operational ability to meet their contractual obligations."² Finally, on March 17, 2005, the commission adopted D.05-03-013, which names ESPs and CCAs as respondents to the rulemaking addressing resource adequacy. The commission has already determined that it has jurisdiction over non-utility ESPs and CCAs to impose its resource adequacy requirements. This bill would codify the Commission's jurisdiction over ESPs and CCAs. To the extent this bill reaffirms the Commission's authority to set resource adequacy standards, this would minimize if not eliminate any legal uncertainty over the Commission's authority to set resource adequacy standards.
- Resource diversity. This bill would make all LSEs subject to a non-discriminatory "resource diversity" standard (undefined). It is unclear what this means. Presumably, if the Commission adopted a resource mix (fossil, non-fossil, etc) for the utilities as part of its procurement strategy, then it would have to apply the same resource diversity to ESPs. It is unclear how the commission would ensure that ESPs and CCAs comply with resource diversity requirements. The commission has previously taken positions on its jurisdiction over ESPs and CCA with respect to resource adequacy but has been clear that its inclusion of registered ESPs and CCAs as respondents to the procurement proceeding does not extend to establishing requirements that ESPs and CCAs submit long-term procurement plans to the commission for approval.³ A statutory requirement to ensure that ESPs and

¹ D.04-01-050, p.39

² D.04-07-037, p. 15

³ D.05-03-013, p. 5

CCAs are resource diverse could be implemented by requiring ESPs and CCAs to file procurement plans for commission approval.

- **Cost-effective energy efficiency.** This bill would require all LSEs to meet some form of energy efficiency standards. While the commission currently has non-utility energy efficiency program implementers, it does not currently require all ESPs to implement an energy efficiency program for their customers. The commission has the authority to require ESPs to implement cost-effective energy efficiency plans and be subject to all applicable rules and policies currently in place. However, a statutory requirement would clarify the commission's role in requiring energy efficiency programs for ESPs. It is unclear how ESPs can do this unless the Commission provides them with a share of Public Goods Charge funds proportionate to their load.
- **Renewables portfolio standard.** This bill would make all LSEs, including CCAs and ESPs subject to the renewable portfolio standard. However, these entities are already under the renewable portfolio standard requirements pursuant to P.U. Code sec. 399. The Commission has authority under P.U. Code sec. 399.12 to require ESPs and CCAs to comply with the renewables portfolio standard. It is not clear if this language is needed. However, in R.04-04-026, the Renewables Portfolio Standard Proceeding, the commission has not formally made ESPs and CCAs respondents to the proceeding.
- **Electrical corporation cost recovery.** This bill would require the commission to ensure that costs incurred on behalf of an electrical corporations customers are recovered on a non-bypassable manner from the customers on whose behalf they were incurred. This would protect electrical corporations from load lost to ESPs and CCAs.

LEGISLATIVE HISTORY:

Last year various pieces of legislation reaffirmed the Commission's authority to set resource adequacy standards for all LSEs. However, the issue of resource adequacy was usually part of a far larger piece of legislation affecting issues of direct access and/or creation of a core/noncore market structure. These bills included AB 428 (Richman) and AB 2006 (Nunez). AB 380 is generally consistent with the resource adequacy provisions contained in last year's AB 2006, also authored by Assembly Speaker Nunez.

STATUS:

Set for hearing in the Assembly Utilities & Commerce Committee on April 18, 2005.

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

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Date: April 1, 2005

BILL LANGUAGE:

BILL NUMBER: AB 380 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Nunez

FEBRUARY 11, 2005

An act to add Section 380 to the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 380, as introduced, Nunez. Electricity: electrical restructuring: resource adequacy.

The California Constitution establishes the Public Utilities Commission, and provides it with jurisdiction over all public utilities. The Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities.

The existing Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. Existing law relative to electrical restructuring, authorizes electrical service to be provided, in certain circumstances, by electric service providers, as defined, and community choice aggregators, as defined.

This bill would require the commission, in consultation with the Independent System Operator, to establish resource adequacy requirements to ensure that adequate physical generating capacity, dedicated to serving all load requirements, is available to meet peak demand plus requisite planning and operating reserves, and would require the commission to implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities. The bill would require that the cost of meeting resource adequacy requirements, including the costs associated with system reliability and local area reliability found reasonable by the commission, be fully recoverable from all customers taking service from an electrical corporation on a nonbypassable basis at the time the commitment to incur the cost is made or thereafter. The bill would require that all load serving entities, including electric service providers and community choice aggregators, are subject to the same requirements for resource adequacy, resource diversity, cost-effective energy efficiency, and the renewables portfolio standard, as are applicable to an electrical corporation.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because the provisions of this bill would be part of the act and an order or other action of the commission would be required to

implement certain of the provisions, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 380 is added to the Public Utilities Code , to read:

380. (a) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements to ensure that adequate physical generating capacity dedicated to serving all load requirements is available to meet peak demand and planning and operating reserves, at or deliverable to locations and at times as may be necessary to ensure local area reliability and system reliability, at just and reasonable rates. (b) All electrical load serving entities, including nonutility electric service providers and community choice aggregators, shall be subject to the same requirements for resource adequacy, resource diversity, cost-effective energy efficiency, and the renewables portfolio standard program, that are applicable to electrical corporations pursuant to this section, or otherwise as required by law, or by order or decision of the commission.

(c) The commission shall implement and enforce these resource adequacy requirements in a nondiscriminatory manner as to all load serving entities. The electrical corporation's costs of meeting those resource adequacy requirements, including the costs associated with system reliability and local area reliability, that are found reasonable by the commission, shall be fully recoverable from those customers taking service from the electrical corporation, at the time the commitment to incur the cost is made or thereafter, on a fully nonbypassable basis pursuant to rates that are just and reasonable, as determined by the commission.

SEC. 2.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.